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ADMINISTRATION OF A JUVENILE COURT.

There never has been so much interest manifest in juvenile courts as at present and yet there is very little known about them generally. The proper administration of a juvenile court is certain, not only to reduce the expenses of the county or city wherein they are established, but more important still, to save many a boy and girl from a criminal career to become useful citizens. For these reasons it is to be expected that a profound interest in such courts will be manifested by the bar of the country. The CENTRAL LAW JOURNAL has taken a special interest in the work of the development of these courts and has from time to time noted the decisions with regard to the questions arising in them, where appeals have been taken, and in other ways. There probably is no law journal which has more in regard to these courts than is to be found in the CENTRAL LAW JOURNAL in the last year and one-half. We have just received a copy of the act providing for juvenile courts in the State of Utah which is said to be the best yet enacted in any state. This act seems admirably adapted to cover every situation which may arise in such a jurisdiction. The success of these courts depends upon the qualifications of the judge as well as the probation officers of the court. It is the duty of probation officers to ascertain what children are delinquent in their districts in large cities and when necessary, brought before the court and such provision made as may be deemed for the best interest of the child. Many children are taken from their parents and various methods of reform resorted to in order to bring up the child to useful citizenship. The old way was to arrest children guilty of crimes or misdemeanors and place them in jail with hardened criminals and punish them by sending them to the reform schools. But now all this is being changed by the advent of the juvenile court. Instead of having one mode of correction for all delinquents, they are classified and provided for according to the nature and extent of the requirements ascertained by the judge and probation officers of the court. Instead of rough and harsh treatment, the delinquent is treated kindly and in this way the better nature of the child is revealed to itself; trust and confidence is reposed in it; ambition is roused and a progress in the right direction obtained, where hope had almost been abandoned of a reformation. In many instances a child has been found to be in need of a doctor and when properly treated recovers. An operation may be necessary or some trouble exposed by medical examination which may be cured, so that in connection with these courts a staff of physicians is appointed, and thus hundreds of boys are kept from the contaminating influences of hardened criminals. Instead of one mode of treatment as formerly, the reform school, a half dozen or more methods are put in use with the happiest results.

It was fortunate for the state of Utah that it secured the services of Judge Willis Brown to interpret the laws to accord with the nature of its intendments, which no one could have done who did not have Judge Brown's understanding of children and their needs. Only one man we know of in the country, besides Judge Brown, would have succeeded so well, and unfortunately he has not had a separate court. We mean Judge Lindsay of Denver. Judge Lindsay is hampered by an extremely bad political situation and like every man with advanced ideas, he has found opposition in his own city. That Judge Lindsay has given ideas which have been of incalculable benefit in the conduct of a juvenile court, no unbiased person will deny. He deserves high honor for it. He was the first to open the door to correct methods of procedure in such a court. A juvenile court judge has a position which requires peculiar and extraordinary ability to make it a real success. He needs to devote his whole mind and attention to that one thing, so that if he has a genius for that kind of work it may be unhampered. There is far less need for an extensive understanding of law than for a deep and comprehensive grasp of child nature and the natural remedies which should be applied in order to give the right direction to the delinquent's mind. In these respects Judge Brown is extraordinarily endowed. He has had a separate court, the first to be provided in any state, for which he

himself is responsible in a large degree, and the splendid results accomplished in Salt Lake City show the utility of the course of that state and what may be done by a man without legal training who understands how to deal with children. Boston has recently followed the example of Utah, as has also the District of Columbia, in providing a separate court. If it is necessary, under the constitution of any state to secure a constitutional provision for a separate court, this should by all means be done at once. We know the arguments used by some of those interested in the juvenile courts, which are not separate courts, but the misfortune is that the opinions coming from such sources are not based upon a comparison between a court wholly given up to the consideration of juvenile affairs and one which exercises a general equity jurisdiction and gives but a small portion of its time to the juvenile work, recently included in its work, though equity has always had jurisdiction of this class, as a matter of right. An unbiased view of the work accomplished in less than half the time in Utah, where the separate court is established, as compared with the juvenile court in Chicago, would give Utah the precedence. This statement is given credit in the recent establishment of the separate court in Boston and Washington, D. C. Salt Lake City has been completely transformed by the advent of the separate juvenile court, with Judge Brown to give it direction. In order to understand this, one has to but have the fortune to witness the wonderful influence the expression of his methods has on an audience of children between the ages of twelve and eighteen. It is then easy to understand why he has accomplished such great things in Salt Lake City, Utah, in so short a time.

The juvenile court judge should be appointed, not elected. There is no one matter of greater concern to the state. We think the selection of such a judge should rest with the governor of the state, the state superintendent of public instruction, and the superintendent of public instruction of the city where such a court is to be established. If the constitution of the state is deemed insufficient for this purpose, a constitutional amendment should at once be secured.

The Utah laws are the most advanced which relate to juvenile court matters, and there a commission is established to select a judge. A recent opinion of the Utah Supreme Court upholds the constitutionality of such procedure. Utah is a code state. It is surprising that there exists such a lack of knowledge of the nature and work of the juvenile courts in our land. The average legislator is ignorant of what has been accomplished by the juvenile court or of its possibilities. We do not mean in any way to demean the work of the friends of the juvenile court in Illinois by what we have said. They have done a great work there for humanity, with grand men and women giving time, thought and money for its advancement, and the same is true of St. Louis, particularly of its women, who have been untiring in their devotion to this most worthy cause. There is no work of public welfare more needful to be understood and promoted and none less understood by lawyers in general, who should be its natural champions. The progress of this work is due largely to the women of the country and it now behooves the men in the legislatures in every state to advance the work of the women to which many a boy and girl owe success in life.

NOTES OF IMPORTANT DECISIONS

HUSBAND AND WIFE—LIABILITY OF PARENT FOR ALIENATING SON'S AFFECTION TOWARD HIS WIFE.—While it is well recognized that stronger evidence will be required to determine the guilt of a parent in alienating the affections of their son from his wife than would be necessary were the intermeddler a mere stranger, yet it is not apparent from the recent case of Leavell v. Leavell (Mo. App.), 99 S. W. Rep. 460, just where the liability of the parent does begin in cases of this kind. In the principal case it is evident from the evidence that plaintiff did not make out a case and the cause was properly reversed without remanding, especially as this was the second appeal and no further evidence of malice on the part of the parents had been proven. It appeared from the evidence that plaintiff, a very young girl, who had committed an indiscretion with her husband before her marriage, went with her husband to live with the latter's parents. That after they had lived there for some time, her mother-in-law, not taking kindly to her, suggested that both of them should go to housekeeping near by and that the young husband's father would pay the rent. It was further proven that during the stay of the young couple at the home of the husband's parents, the latter "fussed" with her and said some

harsh words to her in the presence of her husband, and on one occasion suggested to the plaintiff that she "leave your husband if he don't treat you right; you had better go home to your mother where you ought to." Finally, when plaintiff's husband said to her in the presence of his mother that he intended to leave her, his mother said: "I should think so." When the couple subsequently went to housekeeping, the father of plaintiff's husband employed his son on his farm and had him take all his meals at the old home, although he went home to his wife every night until he finally left her.

The court in passing on this case said: "To make out a case against these defendants the evidence must not only show that they did the acts which plaintiff insists caused the alienation of their son's affection for her, but it must show that they knew the acts were wrongful and done for the purpose charged. That such showing should be made is apparent from authorities hereinafter cited. In considering whether such showing was made, it is of the greatest importance to keep in view that the defendants were the mother and father of plaintiff's husband and of the plaintiff's conduct towards them, for her conduct may explain or account for their actions. And it is also necessary, from the fact that proof of malice need not consist of open and affirmative declarations, but may be made out by conduct and acts. In order to properly characterize one's actions or conduct, it is necessary to consider the circumstances, situation, and relationship which exist. Thus, as affecting a married couple, acts and conduct of a stranger which would be justly characterized as those of a malicious intermeddler might be but the natural impulse of the parents which would be set down to their credit by all right-thinking people. This is the view of all the authorities which we have found where the relationship of the defendant has been considered. Hutcheson v. Peck, 5 Johns. (N. Y.) 196; Tucker v. Tucker, 74 Miss. 93, 19 So. Rep. 955, 32 L. R. A. 623; Payne v. Williams, 4 Baxt. (Tenn.) 583; Rice v. Rice, 104 Mich. 371, 62 N. W. Rep. 833; Burnett v. Burkhead, 21 Ark. 77, 76 Am. Dec. 358; Huling v. Huling, 32 Ill. App. 519; Smith v. Lyke, 13 Hun (N. Y.), 204; Brown v. Brown, 124 N. Car. 19, 32 S. E. Rep. 320, 70 Am. St. Rep. 574. It is apparent from the testimony given by the plaintiff as to what these defendants said to her that she quarreled with them, though they were old people, and were sheltering her in their own house, and she affirmatively admitted that she did so, though she said they were the cause. Not only that, but, after the child was born, she wrote them the note above referred to, which we regard as a confession of her own wrong, and as fully explaining the conduct of these defendants of which she complains. It reads: 'Father and Mother Leavell: I write asking your pardon and forgiveness for all I have said and done to cause any hard feeling. Please come and see our baby. Pearl.' Furthermore, she admits that Mr. Leavell procured a house for her and Garfield and moved them into it and furnished them with a housekeeping outfit, and that he afterwards bought a house and moved them into it, and that during all the time they were housekeeping defendants supplied the table. She further admitted, on the morning of their moving, the old gentleman advised them to get along peaceably, not to quarrel, and the way to be happy was to live in peace. In the face of all the evidence in her behalf, it is incredible that defendants could have been the wicked and malicious conspirators conspiring and designedly forming plans for the malicious purpose of separating her from Garfield. The testimony as given by plaintiff is greatly discredited by the standpoint from which she viewed her rights and those of these defendants. The whole face of her testimony shows that she thought the defendants owed her shelter and support, and that they should have treated her with great deference; in other words that they should have swallowed the disgrace and humiliation she had brought upon them, and looked and acted as though pleased over it. It shows that she considered them responsible for the consequences of her and Garfield's sinful indiscretion, and that, unmindful of her part in blasting the end of the life of these old people, they should impoverish themselves by paying her damages for Garfield's neglect."

There is no doubt but that the court has arrived at a very proper conclusion in this case, and the rule should be clearly stated that a parent can in no case be liable for alienating the affections of their child from his or her spouse unless actual malice is present, as a clearly proven element in the actions of the parents, as, for instance, in the case of Nichols v. Nichols, 147 Mo. 387, 48 S. W. Rep. 947, where they took the initiative and avowedly separated them, by taking them apart and writing and having published notices in the son's name forbidding any one to trust or harbor the wife. In Hutcheson v. Peck, 5 Johns. 196, Chief Justice Kent said: "If the defendant did stand not in the relation of the father to the plaintiff's wife I should not, perhaps, be inclined to interfere with the verdict. But that relationship gives rise to a new and peculiar interest. * * * A father's house is always open to his children, and whether they be married or unmarried it is still to them a refuge from evil, and a consolation in distress. Natural affection establishes and consecrates this asylum, and, according to Lord Coke, it is 'nature's profession to assist, maintain, and console the child.' I should require, therefore, more proof to sustain the action against a father, than against a stranger. It ought to appear, either that he detains the wife against her will, or that he entices her away from her husband from improper motives. Bad or unworthy motives cannot be presumed. They ought to be positively shown or necessarily deduced from the facts and circumstances detailed.

This principle appears to me to preserve, in due dependence upon each other, and to maintain in harmony, the equally strong and sacred interests of the parent and the husband. The *quo animo* ought, then, in this case, to have been made the test of inquiry and the rule of decision." Every legal presumption is that the parent acted for the best interest of the child. Reed v. Reed, 6 Ind. App. 317, 33 N. E. Rep. 638, 51 Am. St. Rep. 310. Can it be said that, if a parent shall advise his child in good faith, he does so at the risk of financial ruin? "It would be strange, indeed, if parents, under peril of legal consequences, must keep silence under such circumstances, or must clothe in terms of respect their expressions of outraged feeling, when even strangers would be excused for speaking with freedom." White v. Ross, 47 Mich. 172, 10 N. W. Rep. 188. So it has been ruled that a parent, acting in response to natural affection, may, in good faith, advise his child in favor of a separation, if justified by his information, although such information may be unfounded. Bennett v. Smith, 21 Barb. 439, 443, 445. This court has ruled, in an opinion of the presiding judge, that there was a broad distinction to be made between the acts of a stranger interfering with marital relations and acts of parents. Love v. Love, 98 Mo. App. 562, 73 S. W. Rep. 255. And it was likewise so stated by the St. Louis Court of Appeals in Barton v. Barton (Mo. App.), 94 S. W. Rep. 574.

CARRIERS—DAMAGES WHERE FRUIT DELIVERED IN BAD CONDITION AND EVIDENCE AS TO NEGLIGENCE.—The case of Brennison v. Pennsylvania R. Co. (Minn.), 110 N. W. Rep. 362, is one of interest to the large class of fruit growers in all parts of the country, and is decided on correct principles. There is every reason to hold a carrier to the utmost diligence in the case of its undertaking to carry fruit a long distance (in this case strawberries) where refrigeration is required. A failure to keep the bunkers full of ice, at least, to have them full at the start when the heat is being taken out of the berries, would unquestionably be such negligence as would give a right of action, if they were received in good condition and arrived on the market in bad condition, and any failure to keep a car properly iced *en route* would be *prima facie* evidence of neglect.

The assignments of error challenge the correctness of the findings (a) that the berries were delivered to the defendant in good condition; (b) that the defendant, in transporting the berries, negligently and carele-sly conducted itself as a common carrier; (c) that the berries became overheated and mouldy while in the possession of the defendant; and (d) that the berries decayed and were damaged by reason of the negligence of the defendant, and in handling and caring for the same while on the way from Sunbury to Buffalo. The findings to which the appellant objects are really the ultimate conclusions to which the court arrived from the consideration of the undisputed facts, and the question is whether these conclusions are justifiable. The court said: "It appeared that the berries were delivered to the initial carrier at Mt. Olive, N. Car., in good condition on May 8, 1905; that they were placed in a refrigerator car, which was attached to the train which left Mt. Olive at 4:53 p. m. of that day, and that after passing through the hands of various connecting carriers the car was delivered to and accepted by the defendant and carried to Buffalo, where the berries were delivered to the respondent in bad condition. This made a *prima facie* case against the defendant and cast the burden upon it to show that the damages did not result from any cause for which it was legally responsible. The rule is settled in this state and requires no further discussion. Fokens v. U. S. Express Co. (Minn.), 109 N. W. Rep. 834, and cases there cited. That this is the prevailing rule in other states, see Chicago, etc., R. Co. v. Moss, 60 Miss. 1003. 45 Am. Rep. 428; Jones v. St. Louis R. Co., 115 Mo. App. 232, 91 S. W. Rep. 158; Walter v. Ala , etc., R. Co., 142 Ala. 474, 39 So. Rep. 87; Hutchinson, Carriers (3rd Ed.), § 1354, where the authorities are fully cited.

The appellant contends that there is no presumption of negligence when the damage results from the natural process of decay, and that the evidence showed that it did all that could be demanded of it in the care of the fruit. The rule which throws upon the last carrier the burden of freeing itself from responsibility rests upon grounds of general convenience and public policy, and places no unreasonable burden upon it. It is true that the presumption, which arises out of common experience and observation, that things once shown to exist in a particular state are presumed to continue in that condition, has little weight when applied to perishable goods, which are known to be subject to inevitable decay. The time element here becomes of primary importance. But the process of decay may be retarded or hastened by the acts of the carrier, and there is no reason why the burden should not rest upon it to show that it exercised due care under all the circumstances. The methods of handling and transporting fruit are well understood, and carriers accept freight for transportation with the understanding and expectation that they will observe proper care, as that is understood by the shippers and carriers of such articles. Experience shows that perishable furit, when properly handled, can be carried from the southern states to the northern markets in good condition. The carriers assert their ability to do this, and fix their freight charges at rates which enable them to provide proper modern cars and expedite their progress, in order that the fruit may reach its destination before the process of decay has injured or destroyed its value. Carriers are not insurers in such cases; but each one is charged with [the duty of exercising ordinary

care to protect the fruit from injury while it is in its charge, and this duty requires the carrier to use such care in order to prevent the fruit from decaying, as well as from being damaged by other means. What that duty requires in any particular case must be determined from the circumstances and conditions, the nature of the goods, the obligations imposed by the customs and usages of the particular business, and the terms of the contract of shipment.

The appellant contends that the carrier is not under an absolute duty to ice cars. It depends upon the circumstances. It is required to use proper care for the protection and preservation of the property which it accepts for transportation, and, when a failure to ice the cars would amount to want of such care, it would be an act of negligence. As said in Merchants' Dispatch Transportation Co. v. Cornforth, 3 Col. 280, 25 Am. Rep. 757: 'When a common carrier accepts for transportation in the winter season to ship delicate fruits half across the continent, the character of the employment, independent of any contract, clearly implies that he will ship them in such cars and exercise such diligence as may be reasonably necessary for their passage to their destination. Having failed to do this, he cannot escape liability.' There can be no question but that, under the circumstances of this case, a failure to properly ice the cars would render the carrier liable for damages resulting thereby to the fruit. See Railway Co. v. Cromwell, 98 Va. 227, 35 S. E. Rep. 444, 49 L. R. A. 462, 81 Am. St. Rep. 722; Popham v. Barnard, 77 Mo. App. 619; Wing v. New York & E. Co., 1 Hilt. (N. Y.) 235; Beard v. Railway Co., 79 Iowa, 518, 44 N. W. Rep. 800, 7 L. R. A. 280, 18 Am. St. Rep. 381. 'Undoubtedly, under modern methods, in the case of carriers by rail, the rule would extend to proper refrigeration according to the common custom.' Hutchinson, Carriers (3rd Ed.), § 505. The law thus throws upon the carrier the burden of showing a state of circumstances which accounts for the damage to the merchandise and frees it from liability. The trial court found that the appellant had not shown that the damage to the strawberries in question was not caused by some act of negligence on its part.

It appeared that a daily 'berry train' left Mt. Olive each day for the north, and that the car in question was attached to the 'berry train' which left that station at 4:15 p. m. on May 8th. In the usual course of events this car would have been delivered to the Pennsylvania Railroad Company at Sunbury some time on May 10th. The appellant's witness testified that 'fast freight on the berry train from the south arrived at Sunbury on May 11th at 10:43 p. m., and at that time the North Central delivered it at Sunbury to the Pennsylvania Railroad Co.' The witness did not testify that the car in question was attached to the train which arrived at that time, and, as a train of that description arrived each day, the trial court thought that the appellant had failed to show when the car was delivered to it at Sunbury. There is some force in the suggestion that the witness may have told the exact truth with reference to the arrival of the berry train on May 11th, and yet the car in question may have arrived on the corresponding train which arrived at Sunbury about the same hour on the previous day. The conductor who took the train at Sunbury testified that his train left the station on the early morning of May 12th and that it contained the car in question. The evidence certainly does not preclude the possibility that the car arrived at Sunbury on May 10th, when it was due in the regular course of transportation, and through accident or design was held there until it was started north in the early morning of May 12th. The appellant should have shown by clear and satisfactory evidence just when the car came into its possession, and not left the matter to inference from such general statements. The car arrived at Buffalo the evening of May 12th, and was delivered to the consignees the next morning. It does not appear how much, if any ice, was in the bunkers when the car reached Buffalo, or when it was delivered. It is possible that the damage to the berries may have resulted from the neglect of the appellant to keep the car properly iced after its arrival at Buffalo while awaiting delivery to the respondent. It may have resulted from the defective condition of the ventilators, doors, traps, pipes, or other openings in the car during the time it was in the possession of the appellant. The appellant should have shown the condition of the car with reference to such matters, and thus precluded the inference which the court drew from the absence of such evidence. In this state of the record, we cannot say that the court erred in finding that the defendant had not sustained the burden of showing a state of circumstances which accounted for the damages on some other theory than that of its negligence."

UNIFORM LAW RELATING TO ANNULMENT OF MARRIAGE AND DIVORCE.*

The great and constantly increasing number of divorces in the United States has aroused a general public interest which has resulted in a widespread movement for their restriction. As one result of the discussion of this subject, there is a well founded belief that a part of this increase in divorces, at-

*This is the address of the national congress on Uniform Divorce Laws to the national and state legislatures. The draft of an uniform act on divorce recommended for adoption by all the states, is published elsewhere in this issue. ED.

tended with special evils and scandals, is due to the lack of a divorce law uniform throughout the nation.

The power to establish such uniform law has not been committed to the federal government by the constitution, except for the District of Columbia and the territories, and the movement for restriction has therefore been in the direction of securing action of the several states in the passage of such law. In the message of President Roosevelt to the congress of the United States, on January 30, 1905 (sent at the instance of the interchurch conference and requesting the continuance of the collection of divorce statistics under federal authority), he suggested such co-operation of the states, in this language:

"The institution of marriage is of course at the very foundation of our social organization, and all influences that affect that institution are of vital concern to the people of the whole country. There is a widespread conviction that the divorce laws are dangerously lax and indifferently administered in some of the states, resulting in a diminishing regard for the sanctity of the marriage relation. The hope is entertained that co-operation amongst the several states can be secured to the end that there may be enacted upon the subject of marriage and divorce uniform laws, containing all possible safeguards for the security of the family."

Acting on this suggestion of the president, Governor Pennypacker, of Pennsylvania, by the authority of its legislature, requested the co-operation of the other states in the assembling of a congress of delegates to consider the laws and decisions of the several states upon the subject of divorce, with a view to the drafting of a general law, to be submitted to the legislatures of the states, securing as nearly as might be possible uniform statutes upon the subject of divorce throughout the nation. Delegates from forty states convened at a congress held in Washington in February of the present year. The District of Columbia, governed by a federal divorce law, and the Territory of New Mexico were also represented. The divorce congress, after a full discussion lasting four days, reached its conclusions as to the principles on which it seemed practicable to obtain uniform divorce laws of the states, and these principles were expressed in a series of resolutions, which the congress directed to be embodied in a statute or law, to be presented at an adjourned meeting of the congress.

This draft of a law was submitted to the congress at its adjourned meeting held at Philadelphia on November 13, 1906, and after a discussion lasting through two days, the form or draft of the proposed law was finally settled, this congress at the adjourned meeting not undertaking to make any essential departures from the resolutions adopted in February. The resolutions and the law as finally adopted, containing twenty-four sections, are appended hereto.

The divorce congress did not deem it advisable to attempt to regulate the mere details of procedure in divorce actions, and with a few exceptions such details were not embraced either in the resolutions or the uniform divorce law. Two of these exceptions and the principal ones relate to the open public hearings and to publicity of records in divorce cases. Objection has been made to these provisions, on the ground of supposed injury to public morals, but after full consideration of the practice prevailing in the different states, the congress concluded almost unanimously that the advantages of a public and open hearing outweighed any of the dangers suggested, and that in the public interest such hearings were necessary in most of the states, in order to prevent a lax administration of the divorce laws.

The principal subjects covered by the resolutions and the uniform divorce act relate to the important matters of (1) the causes of annulment and divorce; (2) the establishment of the two kinds of divorce—limited as well as absolute, in those states where the former does not exist; (3) the adoption of a uniform rule governing the acquiring of jurisdiction in divorce actions; and, as intimately connected with this last subject, (4) the adoption of a uniform rule covering the subject of the faith and credit to be given to decrees of divorce obtained in other states. Annulments of marriages being judgments or decrees declaring marriages to have been originally illegal or void, are considered to be legally and reasonably distinguished from decrees of divorce which terminate an existing and admitted legal relation and are incorporated in the uniform divorce act, because the divorce acts of all, or nearly all, of

the states include provisions as to such annulments. The causes for annulment now recognized, either by statutes or by judicial decisions, and which are included in the act, are (1) impotency, not known at the time of the marriage, (2) consanguinity and affinity within the prohibited degrees, (3) existing marriage, (4) fraud, force or coercion, and (5) insanity, unknown at the time of marriage, the last two being cases in which the marriage, although voidable at the instance of the injured party, may be subsequently confirmed. In this latter class, the marriage, if so confirmed, is not to be annulled. Another, and an important cause for annulment, has been added in the act and was approved at the adjourned session of the congress, viz., the marriage of a girl under sixteen and of a boy under eighteen, which may be annulled at the suit only of the injured party, unless confirmed by such party, after arriving at these respective ages. Each state fixes by statute or decision some limit of age, and these ages, fixed by the act, while raising the limits fixed by marriages at the common law, are not higher than the age fixed by statutes in many states protecting females against consent to intercourse. The social conditions now generally existing through the union do not seem to be such as to call for the encouragement of marriages at an earlier age, and the evils likely to result generally from such immature marriages seem to require their absolute prohibition.

Limited divorces, or divorces from bed and board, were unanimously recommended by the congress and are provided for by the law, to be granted for the same causes as absolute divorce, at the option of the innocent and injured party, who is not to be compelled to ask for a dissolution of the marriage. This option will, in some states where the distinction does not exist, extend the relief of limited divorce to a large and increasing class, who on account of religious beliefs, conscientious scruples, or other sufficient reason, would not seek absolute divorce, and are therefore, in the states where the distinction does not exist, barred in many cases from a proper relief by legal or judicial separation. The congress recommended that such limited divorces should be retained where already existing and should be provided for in states where no such rights exist. One additional cause for limited divorce on the part of the wife (but not adopted as a cause for absolute divorce), is the hopeless insanity of the husband, occurring after marriage. This relief was not extended to the husband for the insanity of the wife, as it was recognized that such insanity might sometimes result from the physical effect upon the wife of the marriage relation itself, in which respect the spouses are not by nature on an equality.

As to uniformity in the causes for absolute divorce in the several states, the congress recognized that entire uniformity was not now attainable. The sovereign right of each state to the exercise of its judgment in the passage of laws relating to the status of its own citizens, and the conflict of views in the communities of the different states, on the dissolubility of the marriage tie, and the grounds for such dissolution, preclude the possibility of any universal agreement, at the present time, upon the causes for absolute divorce. But it was found at the congress that there was an agreement among a large number of the states in regard to these causes, and in view of this general concurrence the following resolution was adopted: "This congress, desiring to see the number of causes reduced rather than increased, recommends that no additional causes should be recognized in any state, and in those states where causes are restricted, no change is called for." These causes for absolute divorce, thus generally recognized, have been incorporated in the Uniform Divorce Law, as follows: (1) Adultery, (2) bigamy, (3) conviction of crime in certain cases, (4) extreme cruelty, (5) wilful desertion for two years, (6) habitual drunkenness for two years. The law annexes such qualifications to actions for bigamy, conviction of crime, and cruelty, as seem to be appropriate. These appear in the act itself. Two features of the act remain, and, as appears from the discussions in the congress, were considered as the most important part of its work. They relate (1) to the general subject of the jurisdiction of the courts of a state to grant decrees of absolute divorce, and, (2) as closely connected with this, to the recognition or effect to be given in one state to decrees of divorce obtained in another. There was a general conviction that the growing increase of divorces, with their attendant evils, was, to a considerable

extent, due to the misuse or fraudulent use, made by the residents of one state of the laws and courts of a sister state, for the sole purpose of obtaining divorces which could not be secured under the laws of their own state. Instances of divorces thus obtained have become sufficiently numerous to give them a specific characterization as "migratory" or "emigrant" divorces. Their increase within the last decade has to some extent been probably due to occasional instances of divorces of this character occurring among persons widely known for wealth or social station, as such cases not only familiarize the general public with such methods of procedure, but also, from the very eminence of the examples, tend to lower the general standard of public opinion by which such misuse of the laws of another state should be judged. To root out the scandals and evils of these migratory divorces was one of the main objects of the congress, and several of its resolutions were addressed to this subject. The sections of the Uniform Divorce Law which reach it are of two classes, those relating to jurisdiction and those relating to foreign decrees. The sections relating to jurisdiction over actions for divorce provide for a *bona fide* residence of one of the parties to the action for two years (except in cases of adultery or bigamy) in the state where the action is brought, when the cause of action in such state, and for a like term of residence of one of the parties in the state where action is brought when either has become a resident thereof since the cause of action arose, with the important proviso in the latter case that the cause of action must have been recognized in the state in which such party resided at the time the cause of action arose, as a ground for the same relief asked for in the action.

As to the effect in other states of decrees in "migratory divorce" cases, the provisions of the Massachusetts act were recommended by the congress and included in the act, to this effect: "That if any inhabitant of this state shall go into another state, territory or country, in order to obtain a decree of divorce for a cause which occurred while the parties resided in this state, or for a cause which is not ground for a divorce under the laws of this state, a decree so obtained shall be of no force or effect in this state."

The vital subject of the effect to be given in one state to a decree of divorce obtained in good faith in another state, by a *bona fide* resident of the latter state, was also acted on at the adjourned session of the congress, and such action became necessary because of the decision of the United States Supreme Court in the Haddock case, rendered after the holding of the first session of the congress. By this decision it was declared that the faith and credit to be given by one state to the decrees of divorce obtained in another, where the court did not have jurisdiction over both parties, depended upon the laws of comity recognized in each state, and did not come within the protection of the full faith and credit clause of the federal constitution, unless the action was brought and the divorce obtained in the state of the matrimonial domicile, and (it would seem) by the innocent party who remained. This rule removes from the protection of the federal constitution and the establishment of a uniform rule thereunder, all that class of cases where either the innocent party or both parties have removed from the matrimonial domicile to another state, and have become *bona fide* residents thereof. To establish a uniform law which shall reach all cases not covered by the United States Supreme Court decisions, and remove, as far as possible, the scandal to public morals, as well as the reproach to American jurisprudence, arising from a man and woman being held to be married in one state, and not married in another, the congress adopted two principles or rules, one relating to jurisdiction over defendants not personally served with process in the state in which action is brought, the other relating to the effect of foreign decrees.

Jurisdiction for divorce against non-residents, under varying limitations and restrictions, is not only the practice to some extent in every state of the Union which allows divorces, but is the necessary result and outcome of what has been called the American doctrine, allowing the wife to acquire a separate domicile, when the husband has been guilty of a matrimonial offense entitling her to a divorce. From the earliest times and in the courts of every American state, as well as in the United States Supreme Court, the doctrine that the wife in such cases must follow the husband into his domicile for relief, has been rejected as not only unequal and unjust, but as being practically a denial of jus-

tice in many cases. And in a few states the simple claim of the wife that a matrimonial offense justifying a divorce has been committed, entitles her *prima facie* to the separate domicile for the purpose of trying the question. This doctrine of separate domicile of the wife when she has a right to divorce is too firmly rooted in American jurisprudence to be disturbed, even though it has brought in its train as a logical result inconvenience and uncertainty, arising from the diverse effect accorded to such decree outside of the state which granted them, where the defendant was not served within its jurisdiction. But an examination of the laws and decisions of the several states discloses that over ninety-five per cent. of the states (all but three, or perhaps but two), do, on principles of comity and under certain restrictions, recognize as valid, decrees obtained by *bona fide* residents in other states, against non-residents of such state. This recognition is based upon the essential justice of according to other states the same right and privilege which each state exercises for itself. Actual notice of the suit to the non-resident, where practicable, and an opportunity to defend, are conditions imposed by natural justice, and the Uniform Divorce Law, following the resolution of the congress, provides for giving this actual notice out of the state to the defendant, where practicable, in addition to publication within the state. This publication is in all cases required by the act for the purpose of preventing secrecy. The details of the method of working out this essential principle of serving out of the state are, however, to be left to each state. But when these conditions are substantially complied with, and jurisdiction is obtained over the defendant by personal service within or without the state, where practicable, the Uniform Divorce Act maks the decree conclusive, by the provision, "Full faith and credit shall be given in all courts of this state to a decree of annulment of marriage or divorce obtained in another state when the jurisdiction of such court was obtained in the manner and in substantial conformity with the conditions prescribed by sections 7, 8, 9 and 10 of this act." These are the sections relating to jurisdiction. From the benefit of this recognition, however, an express proviso excludes all the migratory divorces which come within the purview of the Massachusetts act above referred to. For the reason that the remarriage of divorced persons often follows so scandalously close upon a divorce, as to arouse suspicions of collusion or bad faith, and also because the marriage bond should not be finally dissolved until after full opportunity to prevent mistakes or fraud, the sense of the congress was that a law suspending the absolute effect of the decree for a year. which has worked favorably in a few states (Wisconsin, Illinois and California) should be adopted by all of the states. The act therefore contains provisions—sections 16 and 17—for a decree *nisi* in the first instance, to become absolute in one year. In the interval the court, of its motion or on application by any party, interested or not, may, for sufficient cause, prevent the decree *nisi* from taking effect. This gives an opportunity for such investigation of the case as the public interest or the rights of the parties may require, before the final dissolution of the marriage bond. It is fully realized that the law now proposed is not a complete or ideal uniform divorce law, but that it is only the best law in that direction which it now seems practicable to obtain. In the control of divorce and its attendant evils, laws perform an important, but only a subordinate part. The practical remedy for controlling the evil is the elevation of the general moral standard in all our communities, not only as to the sundering of the tie, intended to be lifelong and indissoluble, but also as to marriage itself and the assumption of its obligations. For this supreme work there must be enlisted the personal interest and influence of all American men and women who cherish the sanctity of marriage and would preserve the stability and happiness of the home, and their support must be given to the forces and influences which control society and mould public opinion—the fountain and source of our laws. To all in who official station or in the church, on the platform, or through the public press, share in forming an enlightened opinion on a question of vital interest to the American nation, we confidently appeal for aid and co-operation in this first formal effort toward the settlement, by statesthemselves, in the form of law, of some of the questions pressing for solution. The substantial unanimity with which the resolutions and the act have been adopted by the congress encourages the hope that the provisions of the Uniform Di-

vorce Law, substantially in the form now submitted, may ultimately be approved by the congress of the United States, and all of the states and territories, or by so many of them as to secure a decided advance in the direction of a reformation of the American laws relating to the vital question of marriage and divorce. The committee on resolutions appointed at the divorce congress respectfully submit, by its direction, this address on behalf of the congress, with copies of its resolutions of the Uniform Divorce Law, and of the laws relating to the collection of statistics of marriage and divorce.

WALTER GEORGE SMITH,
Philadelphia Pa., Chairman, Committee on Uniform Divorce Laws.

CARRIERS—WHETHER CALL OF STATION AN INVITATION TO ALIGHT.

ILLINOIS CENT. R. CO. v. WARREN.

Circuit Court of Appeals, Fifth Circuit, Dec. 31, 1906.

The announcement of the next station by a porter on a railway passenger train, though made on the near approach to the station, is not an invitation to a passenger to leave his seat and attempt to alight before the train actually stops.

Plaintiff and his brother-in-law were riding on a railroad train, guarding a negro. On the announcement of the station where they intended to alight, plaintiff, for the purpose of resuming custody of the negro and of getting off quickly, left his seat in the smoking compartment while the train was in motion, and went forward through the colored compartment to the front door of the car, which he opened, and stood there waiting for the train to slow down, with his right foot on the door sill, his left foot on the platform, and his right hand on the door facing, from which position he was knocked or pushed by the train porter, so that he fell from the car while the train was in rapid motion, and was injured. Held, that plaintiff was guilty of contributory negligence in taking the position he did, and was not entitled to recover, in the absence of proof that the action of the train porter was willful.

In an action for injuries to a passenger by being pushed from a car platform by the car porter while the train was in rapid motion, evidence held insufficient to warrant a finding that the porter's act was willful or other than accidental or negligent.

Where, in an action for injuries to a passenger, defendant claimed that certain acts occurring at the trial with reference to the extent of plaintiff's injuries unduly influenced the sympathies of the jury, and applied for a new trial on that ground, but the trial judge in denying a new trial did not specifically find that undue influence and prejudice had in fact occurred, the bill of exceptions on a writ of error should be construed to mean that, while the facts were as stated, the jury were not unduly influenced thereby.

This is a suit brought originally by JAMES WARREN against the Illinois Central Railroad Company to recover damages for personal injuries.

Warren's brother-in-law, J. H. Kelly, corroborated Warren's evidence, and further testifies that after Warren was knocked off the train, he, Kelly, ran out of the door and ran to the bottom of the steps and stood there until the train slowed up and he got off.

The railroad company pleaded the general issue and contributory negligence. On the trial in the court below, after all the evidence was offered, counsel for railroad company moved the court for a peremptory charge to the jury to find for the defendant, which charge was refused and exception duly taken. The jury returned a verdict on which there was judgment for the plaintiff in the sum of $10.000. A motion for a new trial on many grounds was made and overruled. The bill of exceptions duly signed and allowed concludes as follows: "During the entire progress of this trial the plaintiff, James Warren, was brought into the courtroom upon a cot, and with the appearance of a hopeless and helpless cripple for life, with a pale, pinched face and emaciated form, gave constant evidences of intense suffering, with frequent groans and pitiable exhibitions of his helpless condition, constantly attended by his wife and two small children, who in turn, ministered to him, which picture was paraded before the jury with every detail faithfully carried out to play upon and unduly excite the sympathies of the jury. When counsel asked his doctor to examine him, Warren exclaimed with an agonizing appeal not to touch him. Later his attorney proposed to exhibit his physical condition to the jury, but Warren protested so appealingly that the jury with one accord asked that he be not molested. These heart-rending scenes were so frequent and constant that they, in fact, constituted the opening and closing argument in the case. Its far-reaching appeal and powerful influence upon the jury is forcibly mirrored by their verdict in the case."

The principal errors assigned in this court are: "Third. The court erred in refusing to grant the peremptory charge asked by the defendant below, wherein it was sought to have the court instruct the jury to find for the defendant below; which was then and there excepted to, as shown by the bill of exceptions on file."

"Fifth. The court erred in refusing to set aside the verdict rendered by the jury in this case (1) because the verdict was excessive, and clearly the result of prejudice and passion excited by the claim that the negro porter had knocked a white man (plaintiff) off the car; (2) and as a result of sympathy for the plaintiff, who was paralyzed, and was lying upon a cot, and was constantly giving evidence of extreme pain and suffering, and was attended by his wife and several small children."

PARDEE, C. J., (after stating the facts): On a railway passenger train the announcement of the

next station, although made on near approach to said station, is not an invitation to a passenger to leave his seat and attempt to alight before the train actually stops. This proposition is supported by Adams' Adm'r. v. Louisville, etc., R. Co., 82 Ky. 607; Railroad v. Asbell, 23 Pa. 147, 62 Am. Dec. 323; Jeffersonville, etc., R. v. Hendricks' Adm'r, 26 Ind. 228; England v. Boston, etc., R. Co., 153 Mass. 490, 27 N. E. Rep. 1; Lewis v. London, etc., R. Co., L. R. 9 Q. B. 66; Bridges v. North London, etc., R. Co., L. R. 6 Q. B. 377.

According to Warren's evidence, corroborated by his main witness, his brother-in-law, Kelly, on the announcement of the train porter that the next station was Oxford, Warren, for the purpose of resuming custody of the negro McGlon and of getting off and away quickly, left his seat in the smoking compartment while the train was in motion, and went forward through the colored compartment to the front door of the car, which he opened, and stood there waiting evidently for the train to slow down, with his right foot on the door sill, his left foot on the platform, and his right hand on the door facing, from which position he was knocked or pushed, so that he fell off the car while the train was in rapid motion, and thereby was injured. In thus going to the front of the car and taking the position described while the train was in rapid motion, Warren was guilty of negligence, which unquestionably contributed to his subsequent injury. See Alabama R. Co. v. Hawk, 72 Ala. 112, 47 Am. Rep. 403; Blodgett v. Bertlett, 50 Ga. 353; Beemis v. Railroad Co., 47 La. Ann. 1671, 18 So. Rep. 711; Quin v. Railroad Co., 51 Ill. 495; Rockford Co. v. Coultas, 37 Ill. 398; Railroad Co. v. Green, 81 Ill. 19, 25 Am. Rep. 255; Malcomb v. Railroad Co., 106 N. Car. 63, 11 S. E. Rep. 187; President v. Carson, 72 Md. 377, 20 Atl. Rep. 113; Goodwin v. Railroad Co., 84 Me. 203, 24 Atl. Rep. 816; Secor v. Toledo, Peoria & W. R. Co. (C. C.), 10 Fed. Rep. 15. According to Warren's evidence, he was pushed or knocked off by the train porter. Neither he nor any of his witnesses testify as to whether the action of the train porter was accidental, negligent, or intended and willful. If the action of the train porter was accidental or even negligent, but not willful, Warren cannot recover from the railroad company, because in taking his position in the door and on the platform of the car, under the circumstances conceded in his evidence, he was guilty of negligence which contributed to his own injury. If the action of the train porter was willfully intended, then Warren can recover, because it is the duty of a common carrier to warn and protect and not to injure a passenger, who may have even negligently exposed himself to injury. A careful analysis of the evidence of Warren and his witnesses, giving full effect thereto and reinforcing the same with the deductions that reasonable men may draw therefrom, brings us to the conclusion that there was no evidence nor deduction from the same sufficient to warrant a finding that the train porter was guilty of willfully pushing or knocking Warren as he stood in the door and on the platform of the moving car. On the whole evidence, direct and circumstantial, the jury would have been fully warranted in finding that the train porter had nothing whatever to do with pushing or knocking Warren from the car.

We conclude that on the evidence of the plaintiff and his witnesses the peremptory instruction to find for the defendant on the issue of contributory negligence should have been given. If the concluding statement in the bill of exceptions means that the jury was unduly influenced in their verdict by their feelings and sympathies for the plaintiff, Warren, and his miserable condition, the trial judge should have granted a new trial on that ground. As, however, the statement of the judge does not specifically find the undue influence and prejudice as a fact, and as he refused a motion for a new trial based on this and other grounds, we must construe the bill of exceptions to mean that, while the facts were as stated, the jury was not unduly influenced thereby.

The judgment of the circuit court is reversed, and the cause is remanded, with instructions to set aside the verdict and grant a new trial.

NOTE.—*A Common Carrier is Bound to Protect Its Passengers from the Violence of Its Servants.*—From reading the facts in the principal case we are astonished at the doctrine promulgated by the majority opinion. The mere statement of the undisputed facts shows a lack of that care which a common carrier owes to its passengers, as to amount to gross negligence. The taking of the question from the jury, as to the contributory negligence of the plaintiff, seems to us an unwarranted usurpation of the function of the jury on the part of the court; even had the plaintiff been guilty of contributory negligence the plaintiff should have recovered. It is common knowledge that upon the announcement of the approach of a train to a station by the servant of the railroad company, that passengers do get up and fill the aisles of the coach to the doorway and out on to the platform, without a protest on the part of the railroad companies; that this is a universal custom; but even were this not true, there was the question of the deliberate intention to knock the plaintiff off the train, which was left to the jury, which had a right to take into consideration all the surrounding circumstances, and the very fact that the plaintiff so standing in the doorway of the car, as the evidence shows, was violently thrown from the train, was evidence for the jury, not the court, from which there was clearly enough to conclude that the act was wilful; the trial judge who heard the evidence was of the same opinion. It would seem from such a case that there was good reason for the act of congress which Mr. Justice Shelby aptly called attention to in his able dissenting opinion in the principal case, which provides for the reestablishment of the functions of a jury and which many of our United States judges seem to have lost sight of completely, that "all questions of negligence and contributory negligence shall be for the jury." Act June 11, 1906, ch. 3073, sec. 2, 34 Stat. 232. There is nothing new established in the act of congress above mentioned; it reaffirms old principles and it is merely evidence of lack of un-

derstanding on the part of our United States courts of fundamental principles, therefore, congress has brought them up with a round turn in the provision referred to. It would seem as though the United States judges would have "sat up" and taken notice after so strong a hint. Practical use of the maxims shows their great utility, and every great judge who has used them to aid in the construction of the law has left his note of praise. *Sic utere tuo ut alienum non laedas* (so use your own as not to injure another), lies at the foundation of many actions where it might have been, but was not, applied. It is applicable here, as well as to real estate matters, and upon this principle the railroad is an insurer of the safety of its passengers as well as because of its contract to carry the passengers safely. Judge Shelby appreciated the fact that the railroad company was an insurer of the safety of its passengers against the acts of its servants on the ground of its contractual obligation to carry safely, for he says: "The plaintiff in error, being a common carrier, was bound so far as practicable, to protect its passengers, while it was carrying them, from violence committed even by strangers; and there surely can be no doubt that it undertakes absolutely to protect them against the violence and misconduct of its own servants engaged at the time in executing the contract." Stewart v. Brooklyn & Crosstown R. R. Co., 90 N. Y. 588, 591, 43 Am. Rep. 185, and cases there cited; Dwinelle, N. Y. C. & H. R. R. Co., 120 N. Y. 117, 24 N. E. Rep. 319, 8 L. R. A. 224, 17 Am. St. Rep. 611. Here is a case where there is no question but that in some way the plaintiff was thrown from the car on to the ground while the train was going rapidly; the complaint and undisputed evidence is that he was knocked off or pushed off by the act of the defendant's porter. This being true and the fact that a railroad company is an insurer of the safety of its passengers, as regards the acts of its servants, the doctrine *res ipsa loquitur* applies and the burden of proof rested upon the railroad company to show that there was no fault on its part, but that the fault was that of the plaintiff, which caused the injury. *Ad questionem facti non respondent judice; ad questionem legis non respondent juratores.* (It is the office of judges to instruct the jury as to questions of law, and the jury to decide questions of fact.) Vol. 2 Hughes' Procedure, 419. There has been a decided tendency, both in the United States courts and state courts, to encroach upon the province of the jury of late and to disregard this maxim, and no case shows this tendency more clearly than the principal case. We give the language of Mr. Justice Shelby which so clearly defines the situation, that it is surprising that any other opinion could have been entertained by the court.

"It is said in the opinion of the court that 'on a railway passenger train the announcement of the next station is not an invitation to a passenger to leave his seat and attempt to alight before the train actually stops.' I cannot see how the cases cited to sustain this statement are applicable, because the evidence on which Warren submitted his case to the jury was to the effect that the railway porter had knocked him off the train when he was standing holding to the door facing. Neither of the two witnesses on which he relied to show the negligence or violence of the porter testified that he left his seat and made 'an attempt to alight before the train actually stops.' It is stated in the opinion of the majority that, 'on the whole evidence, direct and circumstantial, the jury would have been fully warranted in finding that the train porter had nothing whatever to do with pushing or knocking Warren from the car.' Conceding that to be true—while I take a different view of the evidence—the court has not the right, I think, to take a case from the jury because there is evidence which would warrant a verdict for the defendant. The question of the credibility of Warren and Kelly was for the jury.

The court below submitted the question of contributory negligence to the jury. The opinion just read is to the effect that Warren, on the evidence quoted, was guilty of contributory negligence as matter of law, for it is decided that the trial court should have instructed a verdict for the defendant. In Washington & Georgetown R. R. Co. v. Harmon's Admr., 147 U. S. 571, 580, 13 Sup. Ct. Rep. 557, 37 L. Ed. 284, the court, commenting on a case where the person injured was standing on the step of the car, observed: 'There was a conflict of evidence as to the condition of the platform, the position of the plaintiff, and the circumstances surrounding the accident. It is conceded that to be upon the platform, or even upon the step, might not be negligence in all cases, and certainly not negligence in law, but it is insisted that the plaintiff was voluntarily riding upon the step of the car when moving, without any means of support, and that this, in the absence of justification or excuse, would necessarily be negligence.'

I cannot concur in the view that it is negligence *per se* for a passenger to arise from his seat when the porter calls the station where he is to alight, and to walk to the door of the car and take the position described in the evidence. Under the circumstances, it could not be deemed negligence *per se* 'if he stood on the steps of the car.' Brashear v. Houston Central A. & N. R. Co., 47 La. Ann. 735, 17 So. Rep. 260, 28 L. R. A. 811, 49 Am. St. Rep. 382; Watkins v. Bham Ry. & E. Co., 120 Ala. 147, 152, 24 So. Rep. 392, 43 L. R. A. 297; Pa. R. Co. v. Reed, 60 Fed. Rep. 694, 9 C. C. A. 219; Doss v. M. K. & T. R. R. Co., 59 Mo. 27, 38, 21 Am. Rep. 371. If it is 'certainly not negligence in law' to stand on the steps, can it be negligence in law to stand in the door, holding the door facing with the right hand, when the station which is the end of the passenger's journey has been called, and the car is about to stop?

If it were true that Warren was guilty of negligence in taking the position he assumed, it would not be a defense to this action if the conduct of the company's employee, while engaged in the master's service, was intentional and willful. Contributory negligence is not a defense against a willful injury. Beach on Cont. Negl. (3d Ed.), §§ 64, 65; 7 Am. & Eng. Ency. of Law, p. 443. From the violence of the assault which the porter made on Warren, as well as from other facts and circumstances shown in the evidence, the jury might reasonably have concluded that the assault on him was intentional and willful, and in that event the defense of contributory negligence could not have prevailed. In either aspect of the case, the learned trial judge, in my opinion, ruled correctly in refusing to direct a verdict for the defendant.

If the evidence of Warren and Kelly was true, the jury was reasonably justified in finding a verdict for the plaintiff. Taking the case from the jury, therefore, cannot be reconciled with the principles announced in Grand Trunk Ry. Co. v. Ives, 144 U. S. 408, 12 Sup. Ct. Rep. 679, 36 L. Ed. 485, nor with the decisions of this court. Nelson v. N. O. & N. E. R. Co., 100 Fed. Rep. 731, 40 C. C. A. 673; Texas & Pacific Ry. Co. v. Carlin, 111 Fed. Rep. 777, 49 C. C. A. 605; Southern Pacific Co. v. Covey, 109 Fed. Rep. 416, 48

C. C. A. 460; Mexican Central Ry. Co. v. Townsend, 114 Fed. Rep. 737, 52 C. C. A. 369. In Jones v. E. T., V. & G. R. R. Co., 128 U. S. 443, 9 Sup. Ct. Rep. 118, 32 L. Ed. 478, Mr. Justice Miller made an observation, evoked, I think, by the fact that trial courts have been too quick to take cases involving personal injuries from the juries: 'We see no reason, so long as the jury system is the law of the land, and the jury is made the tribunal to decide disputed questions of fact, why it should not decide such questions as these as well as others.'" It also follows that, if the plaintiff was where he had a right to be on the car at the time of the accident, and was knocked off the train by the servant of the company no matter how, that fact would be sufficient to establish the liability of the company, unless some misconduct on the part of the plaintiff was shown to be the proximate cause of the injury.

JETSAM AND FLOTSAM.

UNIFORM DIVORCE LAW*—AN ACT REGULATING ANNULMENT OF MARRIAGE AND DIVORCE.

Section 1. *Annulment, Causes for.*—A marriage may be annulled for any of the following causes existing at the time of the marriage: *a.* Incurable physical impotency, or incapacity for copulation, at the suit of either party; provided, that the party making the application was ignorant of such impotency or incapacity at the time of the marriage. *b.* Consanguinity or affinity according to the table of degrees established by law, at the suit of either party; but when any such marriage shall not have been annulled during the lifetime of the parties the validity thereof shall not be inquired into after the death of either party. *c.* When such marriage was contracted while either of the parties thereto had a husband or wife living, at the suit of either party. *d.* Fraud, force or coercion, at the suit of the innocent and injured party, unless the marriage has been confirmed by the acts of the injured party. *e.* Insanity of either party, at the suit of the other, or at the suit of the committee of the lunatic, or of the lunatic on regaining reason, unless such lunatic after regaining reason has confirmed the marriage; provided, that where the party *compos mentis* is the applicant, such party shall have been ignorant of the other's insanity at the time of the marriage, and shall not have confirmed it subsequent to the lunatic's regaining reason. *f.* At the suit of the wife when she was under the age of sixteen years at the time of the marriage, unless such marriage be confirmed by her after arriving at such age. *g.* At the suit of the husband when he was under the age of eighteen at the time of the marriage, unless such marriage be confirmed by him after arriving at such age.

Section 2. *Divorce, What Kinds.*—Divorce shall be of two kinds: *a.* Divorce from the bonds of matrimony, or divorce *a vinculo matrimonii.* *b.* Divorce from bed and board, or divorce *a mensa et thoro.*

Section 3. *Divorce a vinculo, causes for.*—The causes for divorce from the bonds of matrimony shall be: *a,* Adultery. *b.* Bigamy, at the suit of the innocent and injured party to the first marriage. *c.* Conviction and sentence for crime by a competent court having jurisdiction, followed by a continuous imprisonment for at least two years, or in the case of indeterminate sentence, for at least one year. Provided, that such conviction has been the result of trial in some one of the states of the United States, or in a federal court, or in some one of the territories, possessions or courts subject to the jurisdiction of the United States, or in some foreign country granting a trial by jury, followed by an equally long term of imprisonment. *d.* Extreme cruelty, on the part of either husband or wife, such as to endanger the life or health of the other party or to render cohabitation unsafe. *e.* Wilful desertion for two years. *f.* Habitual drunkenness for two years.

Section 4. *Divorce a Mensa, Causes for.*—The causes for divorce from bed and board shall be: *a.* Adultery. *b.* Bigamy, at the suit of the innocent and injured party to the first marriage. *c.* Conviction and sentence for crime by a competent court having jurisdiction, followed by a continuous imprisonment for at least two years, or in the case of indeterminate sentence, for at least one year; provided, that such conviction has been the result of trial in some one of the states of the United States, or in a federal court, or in some one of the territories, possessions or courts subject to the jurisdiction of the United States, or in some foreign country granting a trial by jury, followed by an equally long term of imprisonment. *d.* Extreme cruelty, on the part of either husband or wife, such as to endanger the life or health of the other party or to render cohabitation unsafe. *e.* Wilful desertion for two years. *f.* Habitual drunkenness for two years. *g.* Hopeless insanity of the husband.

Section 5. *Bars to Divorce.*—No decree for divorce shall be granted if it appears to the satisfaction of the court that the suit has been brought by collusion, or that the plaintiff has procured or connived at the offense charged, or has condoned it, or has been guilty of adultery not condoned.

Section 6. *Jurisdiction, in What Courts.*—The * * * court of this state shall have and entertain jurisdiction of all actions for annulment of marriage, or for divorce.

Section 7. *Jurisdiction, by Personal Service in Actions for Annulment.*—For purposes of annulment of marriage, jurisdiction may be acquired by personal service upon the defendant within this state when either party is a *bona fide* resident of this state at the time of the commencement of the action.

Section 8. *Same—In Actions for Divorce.*—For purposes of divorce, either absolute or from bed and board, jurisdiction may be acquired by personal service upon the defendant within this state, under the following conditions: *a.* When, at the time the cause of action arose, either party was a *bona fide* resident of this state, and has continued so to be down to the time of the commencement of the action; except that no action for absolute divorce shall be commenced for any cause other than adultery or bigamy, unless one of the parties has been for the two years next preceding the commencement of the action a *bona fide* resident of this state. *b.* When, since the cause of action arose, either party has become, and for at least two years next preceding the commencement of the action has continued to be, a *bona fide* resident of this state, provided the cause of action alleged was recognized in the jurisdiction in which such party resided at the time the cause of action arose, as a ground for the same relief asked for in the action in this state.

Section 9. *Jurisdiction by Publication—In Actions for Annulment.*—When the defendant cannot be served personally within this state, and when at the time of

*Proposed by the National Congress on Uniform Divorce Laws for adoption by the various state legislatures.

of the commencement of the action the plaintiff is a *bona fide* resident of this state, jurisdiction for the purpose of annulment of marriage may be acquired by publication, to be followed, where practicable, by service upon or notice to the defendant without this state, or by additional substituted service upon the defendant with this state, as prescribed by law.

Section 10. *Same—In Actions for Divorce.*—When the defendant cannot be served personally within this state, and when at the time of the commencement of the action the plaintiff is a *bona fide* resident of this state, jurisdiction for the purpose of divorce, whether absolute or from bed and board, may be acquired by publication, to be followed where practicable by service upon or notice to the defendant without this state, or by additional substituted service upon the defendant within this state, as prescribed by law, under the following conditions: *a.* When, at the time the cause of action arose, the plaintiff was a *bona fide* resident of this state, and has continued so to be down to the time of the commencement of the action; except that no action for absolute divorce shall be commenced for any cause other than adultery or bigamy, unless the plaintiff has been for the two years next preceding the commencement of the action a *bona fide* resident of this state. *b.* When, since the cause of action arose, the plaintiff has become, and for at least two years next preceding the commencement of the action has continued to be, a *bona fide* resident of this state, provided, the cause of action alleged was recognized in the jurisdiction in which the plaintiff resided at the time the cause of action arose, as a ground for the same relief asked for in the action in this state.

Section 11. *Particeps Criminis.*—Any one charged as a *particeps criminis* shall be made a party, upon his or her application to the court, subject to such terms and conditions as the court may prescribe.

Section 12. *Hearings and Trials.*—All hearings and trials shall be had before the court, and not before a master, referee, or any other delegated representative, and shall in all cases be public.

Section 13. *Attorney, Appointment of*—In all uncontested cases, and in any other case where the court may deem it necessary or proper, a disinterested attorney may be assigned by the court actively to defend the case.

Section 14. *Proof Required.*—No decree for annulment of marriage, or for divorce, shall be granted unless the cause is shown by affirmative proof aside from any admissions on the part of the defendant.

Section 15. *Impounding of Record, etc.*—No record or evidence in any case shall be impounded, or access thereto refused.

Section 16. *Decrees Nisi.*—If after the hearing of any cause, or after a jury trial resulting in a verdict for the plaintiff, the court shall be of opinion that the plaintiff is entitled to a decree annulling the marriage, or to a decree for divorce from the bonds of matrimony, a decree *nisi* shall be entered.

Section 17. *Absolute Decrees.*—A decree *nisi* shall become absolute after the expiration of one year from the entry thereof, unless appealed from or proceedings for review are pending, or the court before the expiration of said period for sufficient cause, upon its own notion, or upon the application of any party, whether interested or not, otherwise orders; and at the expiration of one year such final and absolute decree shall then be entered upon application to the court by the plaintiff, unless prior to that time cause be shown to the contrary.

Section 18. *Decrees a Mensa.*—In all cases of divorce from bed and board for any of the causes specified in section 4 of this act, the court may decree a separation forever thereafter, or for a limited time, as shall seem just and reasonable, with a provision that in case of a reconciliation at any time thereafter, the parties may apply for a revocation or suspension of the decree; and upon such application the court shall make such order as may be just and reasonable.

Section 19. *Former Name of Wife.*—The court upon granting a divorce from the bonds of matrimony to a woman may allow her to resume her maiden name, or the name of a former deceased husband.

Section 20. *Children, Legitimacy of—In action by Wife.*—In an action brought by the wife, the legitimacy of any child born or begotten before the commencement of the action shall not be affected.

Section 21. *Same—In Action by Husband.*—In an action brought by the husband, the legitimacy of any child born or begotten before the commission of the offense charged shall not be affected; but the legitimacy of any other child of the wife may be determined as one of the issues of the action. All children begotten before the commencement of the action shall be presumed to be legitimate.

Section 22. *Foreign Decrees.*—Full faith and credit shall be given in all the courts of this state to a decree of annulment of marriage or divorce by a court of competent jurisdiction in another state, territory or possession of the United States when the jurisdiction of such court was obtained in the manner and in substantial conformity with the conditions prescribed in sections 7, 8, 9 and 10 of this act. Nothing herein contained shall be construed to limit the power of any court to give such effect to a decree of annulment or divorce by a court of a foreign country as may be justified by the rules of international comity, provided, that if any inhabitant of this state shall go into another state, territory or country in order to obtain a decree of divorce for a cause which occurred while the parties resided in this state, or for a cause which is not ground for divorce under the laws of this state, a decree so obtained shall be of no force or effect in this state.

Section 23. *Repealing Clause.*—The following acts of assembly and parts of acts, viz.: * * * and all other acts and parts of acts of assembly of this state, general, special or local, inconsistent with this act, be and the same are hereby repealed, provided, that nothing in this act contained shall affect or apply to any actions for annulment of marriage, or for divorce, now pending.

Section 24. *When Act Shall Take Effect.*—This act shall take effect on the —— day of ———, A. D. ——

LIABILITY OF WATER COMPANY TO CITIZEN FOR LOSS BY FIRE BECAUSE OF INSUFFICIENT WATER SUPPLY.

The decision of the Supreme Court of Florida in Mugge v. Tampa Water Works Co., 42 So. Rep. 81, has been the subject of extended comment in legal periodicals throughout the country. The substance and grounds of the decision are succinctly set forth in the following syllabus by the court:

"Where a water works company enters into a contract with a city, by the terms of which it enjoys extensive franchises and privileges, such as the right to use the streets with its mains and hydrants, and to have special taxes levied on the property of the citizens, to be paid to it for its supply of water for public

use in the extinguishment of fires, besides other rights and franchises, and thereby assumes the duty of furnishing water for extinguishing fires, and under such a contract constructs and operates its plant, and enjoys the proceeds of such special taxation, it enters upon a public calling and owes a duty to the taxpayers of the city to furnish water for the purpose of extinguishing fires, and it is liable in an action of tort for damages to a taxpayer whose property is destroyed by fire on account of its negligence in not furnishing water in accordance with the terms of the contract. In such case the contract furnishes the measure of its duty."

The opinion of the court concedes that its decision is contrary to the strongly preponderating weight of authority, and beyond doubt the desirableness of the result reached was a very important factor. The only favoring cases which the Florida court could cite were from the courts of Kentucky and North Carolina and the decision of the Supreme Court of the United States in Guardian Trust Co. v. Fischer, 200 U. S. 57. The real bearing of the case last mentioned is explained *infra*. The authority of New York is contrary to that of the Florida case as appears by Wainwright v. Queens County Water Co., 78 Hun, 146. It would seem that the Florida decision amounts to judicial legislation. Among the many comments which have appeared, we would select the following extract from a very elaborate note by A. M. Kales, Esq., in the *Green Bag* for February, 1907 (XIX. *Green Bag*, 132):

"Twenty-three cases arising in twenty jurisdictions and involving the same point as the principal case have resolved the problem of liability in favor of the defendant. Liability of water companies for fire losses, Michigan Law Review, May, 1905. In only one was the decision in any way confined to the question of liability in contract. Howsmon v. Trenton Water Co., 119 Mo. 304, 24 S. W. Rep. 784. In all the others any action, whether in tort or in contract, was denied. In all but two the pleading was under a code, and it made no difference what the form of the action was, whether contract or tort, and in all of them the plaintiff failed because he had no cause of action upon any theory. In some cases the court considered both the theory of contract and of tort. Fowler v. Athens City Water Works (1889), 83 Ga. 219, 9 S. E. Rep. 673; House v. Houston Water Works Co., 88 Tex. 233, 31 S. W. Rep. 179, 28 L. R. A. 532; Britton v. Green Bay Water Works (1902), 81 Wis. 48, 51 N. W. Rep. 84; Fitch v. Seymour Water Co. (1894), 139 Ind. 214, 37 N. E. Rep. 982; Nickerson v. Bridgeport Hydraulic Co. (1878), 46 Conn. 24; Nichol v. Huntington Water Co. (1903), 53 West Va. 348, 44 S. E. Rep. 290. In some the court was indifferent to terminology. Wainwright v. Queens Co. Water Co. (1894), 78 Hun, 146, 28 N. Y. Supp. 987; Beck v. Kittanning Water Co. (Pa. 1887), 11 Atl. Rep. 300; Stone v. Uniontown Water Co. (1895), 4 Pa. Dist. Repts. 431; Foster v. Lookout Water Co., 3 Lea (Tenn. 1879), 42; Wilkinson v. Light, Heat & Water Co. (1900), 78 Miss. 398, 28 So. Rep. 877; Bush v. Artesian Hot & Cold Water Co. (1895), 4 Idaho, 618, 43 Pac. Rep. 69; Mott v. Cherryvale Water Co. (1892), 48 Kan. 12, 28 Pac. Rep. 989; Town of Ukiah City v. Ukiah Water & Imp. Co. (Cal. 1904), 75 Pac. Rep. 773. In others still the court assumed that if there was any cause of action it must be in contract. Ferris v. Carson Water Co. (1881), 16 Nev. 44; Davis v. Clinton Water Works Co. (1880), 54 Iowa, 59; Becker v. Keokuk Water Works, 79 Iowa, 419; Blunk v. Dennison Water Supply Co. (Ohio, 1905), 73 N. E. Rep. 210. In the two jurisdictions which had a common law system of pleading, the action was on the case in tort for damages. In both a demurrer to the declaration was sustained, the court considering whether any action lay either in contract or tort. Nickerson v. Bridgeport Hydraulic Co. (1878), 46 Conn. 24; Nichol v. Huntington Water Co. (1903), 53 W. Va. 348, 44 S. E. Rep. 290. A recent case in Louisiana (Allen & Curry Mfg. Co. v. Shreveport Water Works Co., 113 La. 1091, 37 So. Rep. 980), has reversed its former decision (Planters' Oil Mill v. Monroe Water Works, 52 La. Ann. 1243, 27 So. Rep. 684), holding the water company liable. Kentucky, the original jurisdiction holding the water company liable in contract, seems to have become a trifle apologetic about its position. Graves County Water Co. v. Ligon (Ky.), 66 S. W. Rep. 725, 726.

By far the most usual line of reasoning upon which the water company is held not liable on any theory is that the plaintiff is not in any proper sense the beneficary of the obligation on the part of the water company to the municipality. This is most succinctly put in Allen & Curry Mfg. Co. v. Shreveport Water Works Co., 113 La. 1091, 37 So. Rep. 980; see also Britton v. Green Bay Water Works, 81 Wis. 48, 56, 51 N. E. Rep. 84; Nickerson v. Bridgeport Hydraulic Co., 46 Conn. 24, 29; House v. Houston Water Works Co., 88 Tex. 233, 239, 31 S. W. Rep. 179; Howsmon v. Trenton Water Co., 119 Mo. 304, 314, 24 S. W. Rep. 784; Blunk v. Dennison Water Supply Co. (Ohio), 73 N. E. Rep. 210, 211. See further to the same effect, but not so succinctly, Wainwright v. Queens County Water Co., 78 Hun, 146, 28 N. Y. Supp. 987; Ferris v. Carson Water Co., 16 Nev. 44, 47; Nichol v. Huntington Water Co., 53 W. Va. 348, 44 S. E. Rep. 290; Fitch v. Seymour Water Co., 139 Ind. 214, 87 N. E. Rep. 982; Wilkinson v. Light, Heat & Water Co., 78 Miss. 389, 28 So. Rep. 877. In the Texas case (House v. Houston Water Works Co., 78 Tex. 233, 31 S. W. Rep. 179) the court distinguished between the right of the sendee of a telegram to sue the telegraph company in tort for negligence, and the nonliability in tort of the water company to the inhabitants in case of loss by fire on the ground that in the former case the telegraph company is serving directly the person to whom the message is sent.

Guardian Trust Company v. Fisher, 200 U. S. 57, does not in fact hold in the slighest degree that an action of tort lies against the water company. There judgment had been obtained in the state courts of North Carolina against the water company for loss by fire. In foreclosure proceedings against the water company in the United States court these judgments were proved up as claims. The question of liability was absolutely closed. The only question was whether the judgments were in tort or contract. If they were in the former, then they took priority over the bonds.

The North Carolina court had already held the judgments to be in tort. The United States Circuit Court held the same way, and in the United States Supreme Court this was affirmed. No question of the propriety of the judgments was up. The only question was, What was their character? The supreme court while denied all right to consider the validity or propriety of the judgments, were asked to say upon what legal theory they rested. They evidently regard the tort theory as more possible than contract. Then they stated the most plausible ground of tort liability which they could invent. By this means the character of the judgments only, and not their propriety, was fixed. Obviously there is nothing in such

a decision which lends the slightest countenance to the holding on the merits of the question that a judgment in tort is a proper one.

The difficulty in the class of cases of which the principal is one is the opportunity which is offered to a court, swayed by sentiment and sympathy, of making a special rule for a particular case contrary to a general rule of the greatest fundamental importance, and by way of infringement upon the peculiar province of the legislature."—*New York Law Journal.*

NEWS ITEM.

BASE USES OF THE REFERENDUM.

The way in which the referendum can be used to check wholesome legislation is illustrated in South Dakota. That state has acquired an unenviable reputation for the laxity of its divorce laws. The granting of divorces to nonresidents is not, indeed, the chief business of the state, but the impression has been made upon the rest of the world that this is so. The legislature, in order to remove this stigma from the state, passed a law extending the period of residence required before a divorce from six months to one year. This law will not hinder *bona fide* residents of the state from getting divorces when justified, but will stop residents of other states from using the courts of South Dakota in order to circumvent the courts of their own states.

The only people injured by the passage of the law are the shysters and boarding house keepers who have catered especially to the divorce trade. These persons have invoked the aid of that law of South Dakota which permits a referendum to be taken on an act of the legislature, provided that the necessary petition is presented within ninety days of the passage of the act. The vote on the referendum must take place at a general election, and in the meantime the effect of the act is suspended. Petitions can always find signers. This has been shown amusingly at different times in legislative bodies. This petition will, no doubt, be filed before the expiration of the ninety days. As there can be no vote before November, 1908, the law cannot go into effect till then.

Here is a law which is a credit to the state, one to which there is no creditable opposition, and yet which is to be held up automatically for nearly two years by the mischievous referendum clause. Not even the opponents of the bill believe that it will fail to be ratified at the polls. No useful purpose is served by delaying its operations, and yet, if a certain percentage of people sign the petition, there is no power in South Dakota to put into effect the will of the m jority of the people until two years nearly have passed. In the meantime it may be expected that interested parties will use every means to bring to the notice of New York society people and other possible customers the fact that there are only a few months left in which to secure bargain divorces upon application to South Dakota. Any one who has reason to think that he or she might find a more attractive or congenial matrimonial partner will hasten to get a divorce while they are going, even if there is no immediate need of one. The beauties of the referendum could hardly be better illustrated.

[The above editorial from the Chicago Tribune proves the utter failure of the referendum so ably prophesied by Judge Sherwood in a recent issue of this Journal. While in this country the people are the source of all authority, whether legislative, executive or judicial, it is apparent to the most superficial student that all these expressions of popular sovereignty are and must necessarily be delegated. In a nation as big and busy as the United States the people have not the time to devote to the detailed management of public affairs and it would be a ridiculous blunder for the people to stop all the wheels of commerce and industry in order to undertake the business of law-making, when a body of capable men elected by and accountable to the people can give such matters more proper and careful attention. It will soon be found by states who have adopted the referendum that they have fastened upon themselves a clumsy mechanism which will constantly impede their progress, and as in South Dakota, they will find the way to desired reforms blocked by a class of people who will sign anything presented to them by a friend which does not injure their personal or selfish interests, and without a thought of the far reaching consequences or effect of their signature to a petition calling for a referendum on any particular feature of legislation. A. H. R.]

BOOK REVIEWS.

SMITH ON THE LAW OF FRAUD.

No general subject of substantive law is more often litigated than that of fraud and it has always been a matter of surprise to us that while text books on even the subsidiary topics of the law were multiplying with such great rapidity, there were not serious attempts made to prepare for publication a thorough and exhaustive work on the general subject of fraud, including a full discussion of the English and American statutes of frauds. Such a book has now been prepared by John W. Smith, LL.D., author of Smith on Municipal Corporations, Smith on Receiverships, and Smith on Equitable Remedies of Creditors.

This work is indeed pretentious, essaying to cover not only the whole field of general fraud, but also the construction of the statutes of frauds in England and the United States. Our examination of this work has, of necessity, been only cursory, but even from what consideration we have been able to give we have seen in the work the earmarks of exhaustive and accurate research, together with the most successful execution of the author's expressed purpose "to minimize the labor of the lawyer and the judge." Indeed, as a labor saving index to the subject of fraud, whether under common law principles or under the statute of frauds, we know of nothing that will equal this work. The arrangement is natural and logical, while the subdivision is minute. Take, for instance, chapter 14 on the general question of "Fraud in the Purchase of Personal Property." Section 148 under this chapter treats of Elements of Fraud in the Purchase of Goods. Then again this section is subdivided by italic subheadings as follows: (a) Ownership of Specific Property; (b) Insolvency of Purchaser; (c) Insolvency Coupled with Intent not to Pay; (d) Mere insolvency not Fraud; (e) Concealment of Insolvency as Fraud; (f) Intention not to Pay for Goods; (g) Omission to Disclose Insolvency; (h) Written Representations as to the Credit of Another; (i) False Statements to a Commercial Agency; (j) Title of Vendee in Case of Fraud; (k) Possession Obtained by Artifice. It is thus apparent that a practitioner not only is not compelled to read a whole chapter to find what he wants, but neither also is he forced to read an entire section. In a moment, as soon as he has familiarized himself with the scheme of the work, he can put his finger on what he wants with very slight effort.

The style of the work is not distinctive. There is no attempt to be eloquent nor to stir up indignation at the statement of rules of law by courts whose views may not coincide with the author's. On the contrary the author is concise and exceedingly plain in the choice of his words. He is never involved and it is almost impossible to misunderstand the meaning of any of the author's statements.

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HUMOR OF THE LAW.

A disciple of Coke, in Charleston, S. Car., when asked by a "brudder" to explain the Latin terms *de facto* and *de jure* replied: "Dey means dat you must prove de facts to de satisfaction ob de jury."

A gentleman stopping at a hotel in St. Paul during the recent session of the Bar Association asked a colored porter with whom he was well acquainted if the hotel was filled. The reply was, "Yes sah, filled to the roof." On asking if the guests were lawyers, the porter replied, "Yes sah, mostly lawyers; those that are not lawyers are judges."

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. ACCORD AND SATISFACTION—Burden of Proof.—In an action to recover a chattel, held, that the burden was upon defendant to show by a preponderance of the evidence satisfaction by payment of a less sum than that called for in the contract of sale.—National Cash Register Co. v. Petsas, Wash., 86 Pac. Rep. 662.

2. ACTION—Right to Begin.—Where defendant was claiming an interest in certain land conveyed to plaintiffs they were entitled to sue at once to quiet title without waiting for a determination of defendant's proceedings.—Dorris v. McManus, Cal., 86 Pac. Rep. 909.

3. ACTION—Trover and Conversion.—A mortgagee of chattels, by calling on one who converts them to pay the amount realized therefrom, held not to waive his right to sue for conversion.—Baker v. Hutchinson, Ala., 41 So. Rep. 809.

4. ADVERSE POSSESSION—Burden of Proof.—One claiming a right by prescription must prove that the persons against whom the right is sought to be asserted were not under disability during the prescriptive period.—Dees Bros. v. Harrison, Tex., 95 S. W. Rep. 1093.

5. ANIMALS—Health Regulations.—The inspection and quarantining of sheep by a deputy sheep inspector under Laws 1903, p. 37, ch. 42, § 10, are *quasi* judicial duties, and the officer performing them is not liable for damages resulting therefrom in the absence of averment and proof of malice or corruption.—Garff v. Smith, Utah, 86 Pac. Rep. 772.

6 APPEAL AND ERROR—Assignment of Error.—Where the court sustained plaintiff's objection to arguments of defendant's counsel, plaintiff was not entitled to assign the same for error on appeal.—Cutcliff v. Birmingham Ry., Light & Power Co., Ala., 41 So. Rep. 873.

7. APPEAL AND ERROR—Discharge of Attorney.—The exercise of the court's discretion in permitting a substitution of attorneys will not be reviewed on appeal, in the absence of a clear showing of abuse of discretion.—Kelly & Middleton v. Horsley, Ala., 41 So. Rep. 902.

8 APPEAL AND ERROR—Presumptions.—It will be presumed, where the court in a civil case, submitted to it on the law and evidence, acts without hearing argument of counsel, that none was necessary.—Warner v. Close, Mo., 96 S. W. Rep. 491.

9. APPEAL AND ERROR—Review.—Where the record of the trial was referred to for a full statement bearing on an exception to the admission of evidence, but was not furnished, the exception would not be reviewed.—Green v. Dodge, Vt., 64 Atl. Rep. 499.

10. ASSAULT AND BATTERY—Evidence as to Character.—In an action for assault it was not necessary, to justify evidence concerning plaintiff's character for quarrelsomeness when intoxicated, that defendant should have had knowledge of the details of the occurrences indicating such character.—McQuiggan v. Ladd, Vt., 64 Atl. Rep. 503.

11. ASSIGNMENTS—Notice to Assignee.—To charge a vendee's assignee with notice of the terms of the contract of sale, the question as to whether he had been given a duplicate of the original contract should have been limited to a time prior to the assignment.—Womble v. Wilbur, Cal., 86 Pac. Rep. 916.

12. BAIL—Right to Admission to Bail.—Where a person was sentenced to the penitentiary for 20 years, after refusal of a new trial, he was not entitled as a matter of right to demand that he should be admitted to bail, pending appeal.—Vanderford v. Brand, Ga., 54 S. E. Rep. 822.

13. BANKRUPTCY—Effect of Discharge on Mortgage.—A mortgagor's wife, having signed the mortgage and agreed to pay the note, held, not discharged from liability by the mortgagor's adjudication and discharge as a bankrupt.—Security Sav. Bank v. Scott, Cal., 86 Pac. Rep. 903.

14. BANKRUPTCY—Promise to Pay Debt.—A promise by a debtor to pay a previously existing debt made after the adjudication as a bankrupt, but before discharge will not be impaired by the subsequent discharge.—Moore v. Trounstine, Ga., 54 S. E. Rep. 810.

15. BANKRUPTCY—Wrongful Acceptance of Deposits.—In a prosecution for accepting deposits when the bank is insolvent and the insolvency is known to defendant or he has good reason to know such fact, the presumption is that he has such knowledge.—State v. Quackenbush, Minn., 108 N. W. Rep. 953.

16. BIGAMY—Elements of Offense.—Where, in a prosecution for bigamy, there was no evidence that the woman to whom it was charged accused had been previously married was living at the time of his second marriage, his commitment was unauthorized.—*Ex parte* Baker, Cal., 86 Pac. Rep. 915.

17. BILLS AND NOTES—Limitations.—A note held not to show that it is signed by one as surety, so as to make it demurrable on the ground that as to a surety it was barred by limitations.—Scott v. Bales, Ky., 96 S. W. Rep. 528.

18. BOUNDARIES—Conflicting Calls.—Where, in an action to determine a disputed boundary, there is sufficient

evidence to induce the belief that there is a mistake in a call for natural or artificial objects, and not in a call for course and distance, the latter will prevail.—Hamilton v. Blackburn, Tex., 95 S. W. Rep. 1094.

19. BREACH OF MARRIAGE PROMISE—Validity of Promise.—That plaintiff was under a legal disability to make a valid promise of marriage before a divorce held not to disqualify her from making an effective contract to marry six months after the date of the divorce.—Leaman v. Thompson, Wash., 86 Pac. Rep. 926.

20. CANCELLATION OF INSTRUMENTS—Fraud.—In a suit to compel cancellation of an assigoment of a contract, evidence held to sustain a finding that defendant obtained possession of the contract and assignment by fraud without paying the consideration agreed on.—Moore v. Irish, Wash., 86 Pac. Rep. 947.

21. CANCELLATION OF INSTRUMENTS—Land Contract.—Where a vendor was in default in rent for the use of the agricultural portion of the land he was not entitled to cancel the contract of sale for default in interest on deferred payments.—Womble v. Wilbur, Cal., 86 Pac Rep. 916.

22 CARRIERS—Contributory Negligence.—A street car passenger injured in a collision held not guilty of contributory negligence in standing in the vestibule in compliance with a rule requiring users of tobacco to occupy such position, instead of seating himself in the car.—Goodloe v. Metropolitan St. Ry. Co , Mo., 96 S. W. Rep. 482.

23. CONFUSION OF GOODS—Attachment.—Where property purchased at a sale fraudulent as to creditors was inseparably mingled with property purchased from another, and the buyer made no effort to separate the same, the officer making a levy thereon was entitled to satisfy his writs out of the entire property.—Johnson v. Emery, Utah, 86 Pac. Rep. 869.

24. CONTRACTS—Action for Breach.—In an action by subcontractor against contractor whether injury to the building by a fall thereof was the fault of the subcontractor or of the contractor for the cellar walls held a question for the jury.—Colgan v. O'Rourke, Pa., 64 Atl. Rep. 529.

25. CONTRACTS—Construction.—A provision in a contract for the sale of a business that it should be void on payment of the note given for a part of the price, held inapplicable to a clause in the contract obligating the sellers not to again engage in business in competition with the buyer for three years.—Canady v. Knox, Wash., 86 Pac. Rep. 930.

26. CORPORATIONS—Liability for Slander.—A railroad company held not liable for slander of plaintiff by the company's superintendent when plaintiff went to him of his own accord, seeking employment.—Sawyer v. Norfolk & S. R. Co., N. Car., 54 S. E. Rep. 793.

27. CORPORATIONS—Services of Promoter.—In the absence of ratification after organization, or of a charter or statutory provision imposing liability, a corporation is not liable for services performed for it before its organization on a contract made by its promoters.—Tuttle v. George A. Tuttle Co , Me., 64 Atl. Rep. 496.

28. CORPORATIONS—Statutes Governing. — Where the constitution or statute prohibits an act or declares that it shall be unlawful to perform it, it is the reasonable interpretation thereof to say that the people and the legislature have interposed their authority to prevent the act.—Katz v. Herrick, Idaho, 86 Pac. Rep. 873.

29. COUNTIES—Claims.—Where a board of supervisors has passed on the validity of a claim against the county, the board's findings on questions of fact cannot be collaterally assailed.—Riverside County v. Yawman & Erbe Mfg. Co., Cal., 86 Pac. Rep. 900.

30. COURTS — Equitable Jurisdiction. — The probate court held without jurisdiction to allow a claim against a decedent's estate where the allowance required the exercise of equity jurisdiction to set aside a contract made between claimant and decedent.—Ivie v. Ewing, Mo., 96 S. W. Rep. 481.

31. CRIMINAL TRIAL—Change of Venue. — Though on change of venue the clerk transmits two original indictments for the same offense, jurisdiction is not lost thereby when it clearly appears on which indictment the change was made.—Thompson v. State, Fla., 41 So. Rep. 899.

32. CRIMINAL TRIAL—Competency of Jurors.—In the absence of a showing that jurors had formed an opinion as to the merits of the case, the presumption is that they were properly qualified before being accepted —Day v. Commonwealth, Ky., 96 S. W. Rep. 510.

33. CRIMINAL TRIAL—Instructions.—A charge is properly refused which tends to mislead the jury into the belief that they are bound to lend the same credence to the testimony of accused as a witness as to that of any disinterested witness.—Blanton v. State, Fla., 41 So. Rep. 789.

34. CRIMINAL TRIAL—Instructions in Homicide Case.—The trial judge should not single out and give undue prominence to the testimony of the defendant, and the fact of his interest in the result of the trial.—Keigans v. State, Fla., 41 So. Rep. 886

35. CRIMINAL TRIAL — Pleading. — Accused having pleaded not guilty a motion for leave to withdraw the plea to move to set aside the indictment not disclosing any ground on which such motion must be based held properly denied.—People v. Staples, Cal., 86 Pac Rep. 886.

36. CRIMINAL TRIAL—Request of Jury For Further Instructions —Where the jury returned into court and stated that some of them desired to know if they could "modify their verdict," meaning if they could find defendant guilty of a less offense. than murder there was no error reading to them that portion of the charge.—Perdue v. State, Ga., 54 S. E. Rep. 820.

37. DEATH—Burden of Proof.—Where a husband and wife perished in a common disaster, one claiming through an alleged survivorship of the husband has the burden of proving the prior death of the wife.—*In re* Gerdes' Estate, 100 N. Y. Supp. 440.

38. DEDICATION — Owner of Absolute Fee.—Only the owner of an absolute fee can make an absolute dedication to a public use.—Bruce v. Seaboard Air Line Ry , Fla., 41 So. Rep. 883.

39. DIVORCE—Alimony.—Where in divorce there was a petition for temporary alimony to which a plea in abatement was filed, held error to pass an order refusing temporary alimony without going into the merits of the case.—Dougherty v. Dougherty, Ga., 54 S. E. Rep. 811.

40. DIVORCE — Condonation.—Where a wife condones the crimes of her husband, he can be divorced from her for the same offense subsequently committed by her.—Talley v. Talley, Pa., 64 Atl. Rep. 528.

41. DOWER—Collusion to Bar Wife's Rights.—Where by collusion land was sold under foreclosure to bar the wife's dower rights and surplus paid to husband, the land held chargeable with wife's dower interest.—Turner v. Kuehnle, N. J., 64 Atl. Rep. 478.

42. ELECTIONS—Recanvass.—*Mandamus* to compel recanvass of election held impossible where the ballots have been left to the public and examined by it —*In re* Burrell, 100 N. Y. Supp. 470.

43. ELECTRICITY — Telephones.—Where a person was killed by an electric currrent from a telephone on his premises, the rule *res ipsa loquitur* applies —Delahunt v. United Telephone & Telegraph Co., Pa., 64 Atl. Rep. 515

44. EMBEZZLEMENT — Elements of Offense.—Where there was no proof that the money charged to have been embezzled was lawful money of the United States, and the money was not shown to have had any value, defendant was entitled to the general charge in his favor. —Knight v. State, Ala., 41 So. Rep. 911.

45. EVIDENCE—Action for Cancellation of Instrument. —In a suit to cancel a land contract, evidence that the vendee stated that he gave his assignee a duplicate of the contract when he assigned his interests therein, held inadmissible as a declaration against interest under

Code Civ. Proc. 1870.—Womble v. Wilbur, Cal., 86 Pac. Rep. 916.

46. EVDIENCE—Assault and Battery.—Where, in an action for assault, plaintiff claimed that he never drank, evidence that he had done so several years before the date of the assault held not objectionable for remoteness.—McQuiggan v. Ladd, Vt., 64 Atl. Rep. 508.

47. EXECUTORS AND ADMINISTRATORS—Accounting.—Though an administrator misappropriated assets, but obtained his discharge by fraud, yet his discharge can be set aside at the suit of the adult heirs only if commenced within three years from its rendition.—Wicker v. Howard, Ga., 54 S. E. Rep. 821.

48. EXECUTORS AND ADMINISTRATORS—Allowance of Claim.—The allowance of a demand against a decedent's estate, unappealed from, held, in general, a final judgment, conclusive of the validity of the claim on final settlement.—Ivie v. Ewing, Mo., 96 S. W. Rep. 481.

49. EXECUTORS AND ADMINISTRATORS—Payment of Judgment.—Where executor pays judgment obtained against him the question is whether he showed bad faith sufficient to deprive him of right to be subrogated to the position of a judgment creditor or to refuse credit for its payment.—Parks v. McDaniel, S. Car., 54 S. E. Rep. 801.

50. FIRE INSURANCE—Awards.—Where plaintiff sought to establish the invalidity of certain awards in actions on insurance policies, but was unable to establish the fraud alleged, he was nevertheless entitled to recover the amount of the awards without costs.—Bellinger v. German Ins Co., 109 N. Y. Supp. 424.

51. FRAUDULENT CONVEYANCES—Husband and Wife.—One who was not a creditor of a husband at the time he purchased bank stock in the name of his wife held not thereafter entitled to claim that the transaction was fraudulent as against the husband's creditors.—Boldrick v. Mills, Ky., 96 S. W. Rep. 524.

52. GARNISHMENT—Wages.—Where plaintiff garnished wages due a laborer, and defendant filed a claim on the ground that they were exempt, held that a finding by the magistrate awarding the money to the claimant was proper.—Couch v. Hice, Ga., 54 S. E. Rep. 813.

53. GAS—Care Required of Gas Company.—A gas company must be held to a high degree of care and to the exercise of every reasonable precaution against accidental injury.—Shirey v. Consumers' Gas Co., Pa., 64 Atl. Rep. 541.

54. GUARDIAN AND WARD—Sale of Ward's Land.—An application to sell real estate of infants to pay claims of mother denied, where it was based in part on the dealings of the mother as administratrix with her deceased husband's estate in a foreign state.—*In re* Wyckoff, 100 N. Y. Supp. 417.

55. HIGHWAYS—Obstruction.—A landowner held entitled to injunctive relief against a public nuisance in a highway.—Sloss-Sheffield Steel & Iron Co. v. Johnson, Ala., 41 So. Rep. 907.

56. HUSBAND AND WIFE—Agency of Husband.—Where husband acted as authorized agent for his wife, held that she was bound by waiver of priority in purchase money mortgage executed under his authority.—Thomas v. Equitable Building & Loan Assn., Pa., 64 Atl. Rep. 581.

57. HUSBAND AND WIFE—Wife's Personalty.—A husband, prior to the act of 1894, held entitled to waive his right to his wife's personalty and permit her to control the same as her separate estate.—Boldrick v. Mills, Ky., 96 S. W. Rep. 524.

58. INFANTS—State's Right to Govern Employment.—The state has power to forbid the employment of children in certain callings, merely because it believes such prohibition to be for their best interest, though the employment does not involve a direct danger to morals, decency, or life.—State v. Shorey, Oreg., 86 Pac. Rep. 881.

59. INJUNCTION—Laches.—It is inequitable for a person having a legal right to an accounting to delay action without reason until after the death of the party liable to account.—Clark v. Chase, Me., 64 Atl. Rep. 493.

60. INTOXICATING LIQUORS—Illegal Sale.—A mere purchaser of liquor for one's self or for another does not in so purchasing violate the laws against the sale of liquors.—Hiers v. State, Fla., 41 So. Rep. 881.

61. INTOXICATING LIQUORS—Local Option Election.—That ladies furnished coffee and doughnuts at an election for the purpose of influencing votes within prohibited districts, where it might subject the offenders to prosecution, is not sufficient ground for resubmission.—*In re* Cipperley, 100 N. Y. Supp. 473.

62. JUDGMENT—Res Judicata.—An issue concerning the conversion of certain bonds in a prior suit to set aside a sale of stock of a corporation held collateral so that an adverse judgment was not *res judicata* of such issue in a subsequent suit.—Lowe v. Ozmun, Cal., 86 Pac. Rep. 729.

63. JURY—Disqualification.—A jury drawn from the box at the end of the calendar year to serve for the ensuing week of a regular term, held not disqualified by the fact that before a case is actually called a new jury box has been prepared for the year.—Thompson v. State, Fla., 41 So. Rep. 899.

64. JURY—Selection.—Where a juror was discharged for illness while the jury was being impaneled, the denial of a motion that each side be allowed the number of peremptory challenges remaining after deducting from the original number the number already used, as premature, held proper.—People v. Weber, Cal., 86 Pac. Rep. 671.

65. JUSTICES OF THE PEACE—Dismissal of Action.—Where a magistrate dismisses an action because of a sum in excess of its jurisdiction and plaintiff appeals, the superior court properly allowed such fact to be shown by evidence outside the record.—Singer v. Atlantic Rice Mills Co., Ga., 54 S. E. Rep. 821.

66. LANDLORD AND TENANT—Lien of Landlord.—The liability to the landlord, of a buyer of corn from a tenant, held not affected by the buyer's belief that it was raised on premises other than those rented by plaintiff to the tenant.—King v. Rowlett, Mo., 96 S. W. Rep. 493.

67. LANDLORD AND TENANT—Rights of Subtenant.—A subtenant held chargeable with notice of the provisions of his lessor's lease and to take the risk of lawful cancellation thereof.—Cuschner v. Westlake, Wash., 86 Pac. Rep. 948.

68. LARCENY—Instructions.—On a prosecution for grand larceny, held error to instruct that defendant was guilty of grand larceny or nothing, to fail to instruct on petit larceny, and to refuse a requested instruction as to what constitutes a taking from the person.—People v. Stofer, Cal., 86 Pac. Rep. 734.

69. LIFE INSURANCE—Notice of Premium Due.—Where insured gave notes for a portion of the premium and did not die until after the tender of payment on notice of the maturity of the notes no forfeiture was incurred.—Kavanaugh v. Security Trust & Life Ins. Co., Tenn., 96 S. W. Rep. 499.

70. LIMITATION OF ACTIONS—Commencement of Action.—Defendant held not entitled to object that plaintiff who issued pluries summons knew that defendant lived in another county from that in which the action was brought.—Bovaird & Seyfang Mfg. Co. v. Ferguson, Pa., 64 Atl. Rep. 513.

71. MANDAMUS—Scope of Remedy.—*Mandamus* held not a proper remedy to compel a trial court to refuse to recognize a change of attorneys until relators' services had been paid or their payment secured.—Kelly & Middleton v. Horsley, Ala., 41 So. Rep. 902.

72. MANDAMUS—Stenographer's Fees.—Where a judge refused to allow a portion of a stenographer's claim because a transcript for which fees were claimed had not been ordered, *mandamus* would not lie to compel the judge to allow the claim in full.—Pipher v. Superior Court of California in Amador County, Cal., 86 Pac. Rep. 904.

73. MASTER AND SERVANT—Accident in Railroad Yards.—Where plaintiff had given up his purpose of going to a closet when he was injured, while standing between two

cars, he was not entitled to recover on the theory that defendant had located the closet beyond the tracks.—Hocker v. Louisville & N. R. Co., Ky., 96 S. W. Rep. 526.

74. MASTER AND SERVANT—Defective Machinery.—The use of a defective railroad coupling in connection with an express order of plaintiff's superintendent to make a coupling therewith held continuing negligence, and the proximate cause of plaintiff's injury.—Liles v. Fosburg Lumber Co., N. Car., 54 S. E. Rep. 795.

75. MASTER AND SERVANT—Injuries to Minor.—A minor held not guilty of contributory negligence as a matter of law in continuing to work, notwithstanding his master's failure to furnish props.—McKinnon v. Western Coal & Mining Co., Mo., 96 S. W. Rep. 485.

76. MASTER AND SERVANT—Injury to Servant.—Where a complaint for injuries failed to allege that plaintiff was not guilty of the negligence, the defect was not supplied by other averments that defendants did not employ a competent powder man, and did not warn plaintiff of the danger.—Schreiner v. Grant Bros., Cal., 86 Pac. Rep. 912.

77. MASTER AND SERVANT—Location of Mail Crane.—The location of a mail crane so as to bring the end of the arm when extended within 10 inches of the cab of a passing locomotive is not negligence *per se*.—Denver & R. G. R. Co. v. Burchard, Colo., 86 Pac. Rep. 749.

78. MASTER AND SERVANT—Negligence.—In an action for the death of a railroad fireman by his head coming in contact with a mail crane, whether such crane was negligently located too near the track held for the jury.—Denver & R. G. R. Co. v. Burchard, Colo., 86 Pac. Rep. 749.

79. MASTER AND SERVANT—Negligence.—In an action for injuries to an employee, where the evidence did not authorize the court as a matter of law to hold that his contributory negligence would defeat recovery, it was error to direct a verdict for defendant.—Talley v. Atlantic & B. Ry. Co., Ga., 54 S. E. Rep. 817.

80. MINES AND MINERALS — Agricultural and School Lands.—The term "sale" as used in the constitution in reference to the disposition of school lands, means the transfer of the absolute or general property in the thing sold, and a mineral lease given under Laws 1889, p. 68, ch. 22, and the amendments thereof, is not a sale of the land.—State v. Evans, Minn., 108 N. W. Rep. 958.

81. MUNICIPAL CORPORATIONS—Compensation for Day Laborers.—Day laborers accepting for two years deduction for Saturday half holidays from wages by city, held estopped thereafter to complain of such deduction.—Wagoner v. City of Philadelphia, Pa., 64 Atl. Rep. 557.

82. MUNICIPAL CORPORATIONS—Sewers.—A city connecting its sewers with a natural channel held not liable for failing to keep that channel open to its mouth.—Dalton v. Towanda Borough, Pa., 64 Atl. Rep. 547.

83. NEGLIGENCE—Independent Contractor. — Defendant railway company providing a place for exhibiton of fireworks held not liable for injuries to a person by negligence of a volunteer assisting an employee of the independent fireworks contractor.—Noggle v. Carlisle & Mt. H. Ry. Co., Pa., 64 Atl. Rep. 547.

84. PLEADING—Demurrer. — A demurrer for want of jurisdiction of defendant's person only raises the question whether defendant is a person that can be subjected to the process and jurisdiction of the court.—Sanipoli v. Pleasant Valley Coal Co., Utah, 86 Pac. Rep 865.

85. PLEDGES—Right of Pledgee to Buy.—Where a pledge authorized a private sale, it contemplated something more than a mere taking over of the property by the pledgee at such a price as he would elect to offer.—Lowe v. Ozmun, Cal., 86 Pac. Rep. 729.

86. PRINCIPAL AND AGENT—Knowledge of Servant.—Knowledge of a servant, whose duty was limited to weighing and receiving corn purchased by his master, as to the place where the corn was raised, held not imputable to his master.—King v. Rowlett, Mo., 96 S. W. Rep. 493.

87. PUBLIC LANDS—Rights of Settlers.—Settlers acquiring public lands under the pre-emption, homestead, or timber culture land laws held not to acquire any rights under the state swamp land laws.—State v. Warner Stock Co., Oreg., 86 Pac. Rep. 780.

88. RECEIVERS—Appointment.—To justify the appointment of a receiver *in limine* it must appear that there is a reasonable probability that complainant will succeed, and that danger to the property, the subject of the suit, is imminent.—Hayes v. Jasper Land Co., Ala., 41 So. Rep. 909.

89. ROBBERY — Instructions.— On a prosecution for robbery, an instruction as to evidence as to property found in defendant's possession and taken from prosecutor, though not specified in the complaint, held to have properly limited the effect of the evidence.—People v. Castile, Cal., 86 Pac. Rep. 746.

90. SPECIFIC PERFORMANCE—Sufficiency of Tender.—Where the vendee in a contract for the sale of land deposited the money tendered in court, held that its withdrawal before trial precluded a decree for specific performance in his favor.—Guillaume v. K. S. D. Fruit Land Co., Oreg., 86 Pac. Rep. 883.

91. TAXATION—Collateral Inheritance Tax.—Where a will provides for the sale of real estate in another state it works an immediate conversion into personalty making it subject to the payment of a collateral inheritance tax in the state.—*In re* Dalrymple's Estate, Pa., 64 Atl. Rep. 554.

92. TRIAL—Offer of Proof.—An offer to show plaintiff's pecuniary condition at the time of the assault complained of without a statement as to what it was expected to prove such condition was held too general.—McQuiggan v. Ladd, Vt., 64 Atl. Rep. 503.

93. VENDOR AND PURCHASER — Delinquent Water Charges.—An ordinance attempting to compel the owner of premises to pay delinquent water taxes incurred before he became the owner, held unreasonable so that such charges are not liens within a contract of sale of the property free from liens and incumbrances.—Linne v. Bredes, Wash., 86 Pac. Rep. 858.

94. VENDOR AND PURCHASER—Fraud of Agent.—A purchaser of land under foreclosure held not a *bona fide* purchaser when he is claiming the fruits of his agent's fraud, though practiced without his knowledge or authority.—Turner v. Kuehnle, N. J., 64 Atl. Rep. 478.

95. VENDOR AND PURCHASER—Purchase from Adverse Claimant.—A vendee in a contract for the sale of land did not forfeit his rights thereunder by contracting to purchase from adverse claimants and attorning to them for the rents.—Cook v. Dane, Wash., 86 Pac. Rep. 947.

96. VENDOR AND PURCHASER—Recovery of Deposit.—One purchasing real estate and making a deposit on account of failure of title held entitled to a lien on the land for deposit and expenses.—Selkir v. Klein, 100 N. Y. Supp. 449.

97. WATERS AND WATER COURSES — Water-Rates — Where a city was authorized to fix rates for the furnishing of water to its inhabitants, it was entitled to classify the consumers with reference to the line of business in which they were engaged.—Woodruff v. City of East Orange, N. J., 64 Atl. Rep. 466.

98. WILLS—Mental Capacity.—That testator at the time of the execution of his will was an inmate of an insane asylum is not ground for granting an issue *devisavit vel non* where his testamentary capacity was established by uncontradicted evidence.—*In re* Draper's Estate, Pa., 64 Atl. Rep. 520.

99. WILLS—Undue Influence.—That testator read over his will and was in possession of his faculties held not to overcome the effect of undue influence where it was drawn by a person standing in a fiduciary relation to his own benefit.—*In re* Thompson's Will, 100 N. Y. Supp. 492.

100. WITNESSES—Cross Examination.—It is error to refuse to permit defendant on cross examination of a state witness to interrogate him as to whether he had made threats against defendant.—Vaughn v. State, Fla., 41 So. Rep. 881.